

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES, *et al.*,

Plaintiffs,

v.

No. 1:23-cv-00108-LMB-JFA

GOOGLE LLC,

Defendant.

**GOOGLE LLC'S MEMORANDUM IN SUPPORT
OF ITS MOTION FOR *IN CAMERA* REVIEW**

In an apparent attempt to frustrate Google's motion to compel, Plaintiff United States has clawed back two deposition transcripts mere hours before Google planned to file its Motion To Compel Production of Documents and Testimony Wrongly Withheld as Privileged, or, in the Alternative, for *In Camera* Review, and To Modify Section V.8.e. of the ESI Order ("Motion to Compel"), even though one deposition took place eight days ago and the other three days ago. Plaintiff requested that Google "return, sequester, or destroy all copies of the deposition transcripts," thereby preventing Google from relying on those transcripts as part of its Motion to Compel. Ex. 5 at 2. Plaintiffs "intend to provide replacement" and "redacted" copies at some unspecified point in the future. *Id.*

Google disagrees with Plaintiff's claims of privilege. For reasons fully stated in Google's corresponding Motion to Compel, attorney work product, attorney-client privilege, deliberative process, and any other type of protections do not apply to this testimony.

Pursuant to Paragraph 12(c) of the Protective Order, Dkt. No. 203, a party, after “being notified” of the production of information “protected by the attorney-client privilege or any other privilege or immunity” may “promptly present the information to the court under seal for a determination of the claim *in camera*.” Therefore, Google requests that the Court review the transcripts *in camera* to make a determination on Plaintiff’s claims. Specifically, Google seeks *in camera* review of:

Karpenko Deposition [Exhibit 1]¹

- Page 46, Line 4, at 11:16:48 – Page 48, Line 15, at 11:21:23
- Page 49, Line 13 at 11:22:26 – Page 49, Line 15, at 11:22:32
- Page 51, Line 25, at 11:25:10 – Page 52, Line 7, at 11:26:10
- Page 56, Line 18, at 11:43:26 – Page 56, Line 20, at 11:43:37
- Page 54, Line 6, at 11:41:17 – Page 54, Line 12, at 11:41:45
- Page 78, Line 21, at 12:20:26 – Page 80, Line 10, at 12:23:09

Owens Deposition [Exhibit 2]

- Page 247, Line 13 – Page 250, Line 10
- Page 254, Line 19 – Page 255, Line 5

Google requests that the Court find that the above-referenced testimony is not covered by any privileged or otherwise protected from disclosure, and allow Google to resume its use of the sequestered transcripts.

Google further requests that the Court, given the tardiness of Plaintiffs’ letter and subsequent prejudice to Google, also review certain sections of the transcripts that are not subject

¹ DOJ’s citations are to the rough transcript. Google had been relying on the final version of the transcripts in preparation for filing its motion to compel. Google attaches the final versions as exhibits 3 and 4.

to Plaintiff's claw back letter. These sections would have been included in Google's Motion to Compel but for Plaintiff's untimely letter. Google should not be prejudiced by Plaintiff's failure to provide a redacted transcript along with their claw back letter.

Dated: August 18, 2023

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Respectfully submitted,

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